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FISCAL NOTE

Drafting Number: LLS 18-0661 Date: February 14, 2018
Prime Sponsors: Rep. Lewis Bill Status: House Health, Insurance, and Environment
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Bill Topic: CONSERVATION EASEMENT TRANSPARENCY

- Summary of Fiscal Impact: State Revenue (indeterminate), State Expenditure (indeterminate), State Transfer, TABOR Refund, Local Government, Statutory Public Entity

The bill adds additional requirements that must be met before creating a conservation easement, limits the term of the easement to 20 years, and changes the application process for conservation easement tax credits. The bill will have an indeterminate revenue increase and expenditure impact on several state agencies. These impacts are ongoing.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This bill reflects the introduced bill.

Summary of Legislation

This bill changes the process for creating conservation easements. Instead of requiring the conservation easement to be permanent, the bill limits the term of the conservation easement to 20 years beginning in 2019, allows for conservation easements to be dissolved if the holder of the easement is insolvent or delinquent, and changes the application process for conservation easement tax credits within the Department of Regulatory Agencies.

Conservation easement agreements. The bill adds several additional requirements for local governments, land owners, and holders of the easement before a conservation easement can be created. Local governments where easements are located are required to hold a public meeting before the conservation easement can be created. The landowner and the conservation easement holder must have a formal agreement for the purposes of the conservation easement. The agreement must provide for an annual report from the holder to the landowner providing information on how the conservation easement is being used. It also must disclose consequences and risks of creating a conservation easement specified in the bill. In addition, the holder of the proposed conservation easement must provide a good faith estimate of total costs to the landowner of creating the easement. The landowner will not be liable for any costs over the estimate prepared by the easement holder. Finally, the holder of the conservation easement is not allowed to permit development on the easement.

Application for conservation easement tax credits. Landowners apply for conservation easement tax credits with the Division of Real Estate within the Department of Regulatory Agencies. Under current law, fees may fluctuate to cover the cost of administering the program. The bill fixes the application fee at \$12,350 and does not allow the fee to be reduced for multiple applicants. Under current law, landowners provide an appraisal of the value of the conservation easement when they apply for the tax credit. Under the bill, if the value is disputed by the division, the landowner can provide two additional appraisals. When three appraisals are provided, the division is required to use the average value of the three appraisals.

Background

A conservation easement is a voluntary legal agreement between a landowner and a charitable organization or government entity that permanently protects scenic or agricultural open space, natural habitat, or recreational areas. These agreements can be tailored to preserve the specific qualities tied to the property, allowing it to remain under private ownership and control. Colorado offers a state income tax credit for conservation easements that qualify as charitable contributions under federal law. In order to receive a federal tax benefit, conservation easements must be permanent.

A Colorado taxpayer can claim a state income tax credit during the tax year when the easement is donated. Beginning in tax year 2014, taxpayers are required to apply for a credit certificate from the Division of Real Estate in the Department of Regulatory Agencies. The division reviews an assessment of the property's fair market value in order to determine the amount of credit for which the easement qualifies.

State Revenue

There is an indeterminate revenue increase to the General Fund. The bill may reduce the number of conservation easements created and eligible for the conservation easement tax credit. In addition, limiting the duration of the easements to 20 years will reduce the value of the conservation easements eligible for the credit. Reducing the number and value of conservation easements will reduce the value of total value conservation easement tax credits claimed. The value of the credit will vary for each specific conservation easement, therefore it is an indeterminate General Fund revenue increase.

State Expenditures

This bill may reduce workload for the Department of Revenue and the Department of Regulatory Agencies if there are fewer conservation easements eligible for the state tax credit are created. There is an indeterminate expenditure increase for the Department of Natural Resources because they hold conservation easements.

Department of Revenue. The Department of Revenue administers the state conservation easement tax credit. If fewer conservation easements are created because of this bill, there will be a workload decrease for the Department of Revenue. As of this writing, the fiscal note assumes no reduction in appropriations are required.

Department of Regulatory Agencies. The Division of Real Estate within the Department of Regulatory Agencies certifies the value of conservation easements and tax credit amounts. If there are fewer conservation easements created, the workload within the Division of Real Estate will decrease. As of this writing, the fiscal note assumes no reduction in appropriations are required.

Department of Natural Resources. Colorado Parks and Wildlife within the Department of Natural Resources is statutorily required to preserve wildlife and habitat. They have obtained about \$25.8 million in conservation easements since 2013 and will likely continue to use conservation easements in the future. Department expenditures will increase for future conservation easements to meet the requirements under the bill. Parks and wildlife staff will attend public hearings, prepare a good faith cost estimate, and prepare reports to landowners on the monitoring activities are required by this bill. The cost and workload will vary for each specific conservation easement, therefore it is an indeterminate workload increase for the Department of Natural Resources. The department anticipates that it can preform any additional workload with existing appropriations.

Local Government

The bill requires local government to hold a public hearing before a conservation easement is created within its boundaries. Public meetings are within the normal business process for local governments and this workload increase can be achieved with existing appropriations.

Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Counties	Information Technology	Law
Municipalities	Natural Resources	Regulatory Agencies
Revenue		